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4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA

6 DAVID J. TIFFANY,

7 Plaintiff,

8 v.

9 QUINTEN BYRNE, *et al.*,

10 Defendants.  
11

Case No. 3:16-cv-00612-MMD-WGC

**ORDER**

Re: ECF No. 15

12 Before the court is Plaintiff's First Amended Complaint. (ECF No. 15.)

13 **I. BACKGROUND**

14 Plaintiff filed his application to proceed in forma pauperis (IFP) and original complaint on  
15 October 21, 2016. (ECF Nos. 1, 1-1.) The court screened the complaint and issued an order on  
16 September 18, 2017, and: dismissed Count I, which alleged a due process violation related to a  
17 disciplinary hearing, with leave to amend; dismissed Count II with prejudice, which alleged a due  
18 process claim for mischaracterization of his appeal and for an alleged failure to investigate his  
19 appeal; and, allowed Count III to proceed against defendant Belanger, based on allegations that he  
20 did not receive the requisite notice and hearings in connection with the time spent in administrative  
21 segregation. (ECF No. 3.)

22 On December 18, 2017, Plaintiff filed a document asking that his action proceed against  
23 defendant Belanger as he had not filed an amended complaint. (ECF No. 6.) On December 21,  
24 2017, the court issued an order stating that the action would proceed against defendant Belanger  
25 only on Count III. (ECF No. 7.) In addition, the case was stayed and the case was referred to the  
26 court's Inmate Early Mediation Program. (*Id.*) The mediation took place on April 10, 2018, but  
27 was unsuccessful. (ECF No. 11.) Plaintiff's IFP application was granted, and the Attorney  
28 General's Office accepted service on behalf of Belanger on May 7, 2018. (ECF Nos. 13, 14.)

1 Belanger had sixty days from the date of the order directing service (filed April 16, 2018) to file  
2 and serve an answer or other response. (ECF No. 13 at 3.)

3 On June 14, 2018, Plaintiff filed a first amended complaint. (ECF No. 15.)

4 The very next day, defendant Belanger filed a motion for summary judgment. (ECF Nos.  
5 16, 16-1 to 16-6.)

## 6 **II. DISCUSSION**

7 A party may amend its pleading once as a matter of course within:

8 (A) 21 days after serving it, or

9 (B) if the pleading is one to which a responsive pleading is required, 21 days  
after service of a responsive pleading or 21 days after service of a motion under  
Rule 12(b), (e), or (f), whichever is earlier.

10 Fed. R. Civ. P. 15(a)(1)(A)-(B).

11 Here, service was accepted on behalf of Belanger on May 7, 2018. The amended complaint  
12 was filed more than twenty-days after service was accepted. Therefore, amendment as a matter of  
13 course was not proper under Rule 15(a)(1)(A). In addition, to the extent Belanger's motion for  
14 summary judgment could be construed as a responsive pleading, the amended complaint was filed  
15 *before* the filing of the motion for summary judgment and not after. As such, amendment as a  
16 matter of course was not proper under Rule 15(a)(1)(B).

17 Therefore, Plaintiff was required to obtain Belanger's consent or the court's leave to file  
18 an amended complaint under Rule 15(a)(2). There is no indication that Belanger gave consent to  
19 the filing of the amended complaint; therefore, Plaintiff was required to file a motion for leave to  
20 amend, which did not occur.

21 As a result, the first amended complaint (ECF No. 15), filed on June 14, 2018, will be  
22 stricken; however, Plaintiff will be given thirty days to file a motion for leave to amend and  
23 proposed amended complaint. Under Local Rule 15-1 the proposed amended complaint must be  
24 attached to the motion seeking leave of court to file the pleading. LR 15-1(a). The proposed  
25 amended complaint must be complete in and of itself without reference to the superseded pleading  
26 and must include copies of all exhibits referred to in the proposed amended pleading. If no motion  
27 is filed within the thirty-day timeframe, the complaint will proceed only as to Count III against  
28 Belanger, as set forth in the original screening order.

1           The court notes that the first amended complaint that is being stricken as improvidently  
2 filed (ECF No. 15), names defendant Belanger in the caption but contains no factual allegations  
3 against Belanger in the body of the complaint such that if that amended pleading had been filed  
4 and screened, the court would not have allowed any claim to proceed against Belanger. Any  
5 proposed amended complaint must name each defendant in the caption, and contain factual  
6 allegations connecting that defendant to the alleged constitutional violation in the body of the  
7 complaint.

8           The court undertook a preliminary review of the remaining allegations in first amended  
9 complaint that is being stricken and points out some deficiencies that may be taken into account if  
10 Plaintiff chooses to file a motion for leave to amend and proposed amended complaint. Plaintiff  
11 still disputes his disciplinary conviction, claiming that Officer Martin’s version of events that give  
12 rise to his disciplinary conviction—that Martin observed Plaintiff engaging in a sexual encounter  
13 with his cellmate—was false; that a hearing officer did not consider Plaintiff’s version of events;  
14 and that superiors Sandie and Foster should have corrected this wrong.

15           As was stated in the original screening order, “[t]he requirements of due process are  
16 satisfied if some evidence supports the decision by the prison disciplinary board.” *Superintendent*  
17 *Mass. Corr. Inst. v. Hill*, 472 U.S. 445, 455 (1985). “Ascertaining whether this standard is satisfied  
18 does not require examination of the entire record, independent assessment of the credibility of  
19 witnesses, or weighing the evidence. Instead, the relevant question is whether there is *any* evidence  
20 in the record that *could* support the conclusion reached by the disciplinary board.” *Id.* at 455-56.  
21 (citations omitted) (emphasis added). In *Hill*, the Supreme Court found that the evidence met the  
22 “some evidence” standard, noting that the disciplinary panel had received testimony from a prison  
23 guard and copies of a written report. *Id.* “The Federal Constitution does not require evidence that  
24 logically precludes any conclusion but the one reached by the disciplinary board. Instead, due  
25 process in this context requires only that there be some evidence to support the findings made in  
26 the disciplinary hearing.” *Hill*, 472 U.S. at 457. The court is “not to make its own assessment of  
27 the credibility of witnesses or reweigh the evidence.” *Cato v. Rushen*, 824 F.2d 703,705 (9th Cir.  
28 1987) (citing *Hill*, 472 U.S. at 455).

1 In addition, courts have held that prisoners do not have a constitutionally protected  
2 guaranteed immunity from being falsely or wrongly accused of conduct which may result in the  
3 deprivation of a protected liberty interest, provided the due process requirements of *Wolff* are  
4 observed. *See Sprouse v. Babcock*, 870 F.2d 450, 452 (8th Cir. 1989); *Freeman v. Rideout*, 808  
5 F.2d 949, 951-52 (2d. Cir. 1986), *cert. denied*, 485 U.S. 982 (1988) (allegation that false evidence  
6 was planted by a prison guard does not state a constitutional claim where procedural process  
7 protections are provided); *see also York v. Hernandez*, 2011 WL2650243, at \* n. 3 (N.D. Cal.  
8 2011) (where plaintiff alleged violation of due process rights by filing false charges against him,  
9 court stated, “without more, a prisoner has no constitutionally guaranteed immunity from being  
10 falsely or wrongly accused of conduct which may result in the deprivation of a protected liberty  
11 interest.”); *Tafielele v. Harrington*, 2011 WL2462750, at \*7 (E.D. Cal. 2011); *but see Hines v.*  
12 *Gomez*, 108 F.3d 265 (9th Cir. 1997) (prisoner can allege the false report or conviction was  
13 retaliatory (in retaliation for exercising constitutional rights), which Plaintiff has not done here).  
14 Rather, the Fourteenth Amendment provides that a prisoner has a right not to be deprived of a  
15 protected liberty interest without due process of law. *Sprouse*, 870 F.2d at 452. Thus, as long as  
16 a prisoner receives proper procedural due process, a claim based on the falsity of disciplinary  
17 charges, standing alone, does not state a constitutional claim. *Id.*; *see also Freeman*, 808 F.2d at  
18 951; *Hanrahan v. Lane*, 747 F.2d 1137, 1140-41 (7th Cir. 1984).

19 In sum, Plaintiff’s allegations in the first amended complaint being stricken would not have  
20 given rise to a viable claim under section 1983. Again, this should be taken into account should  
21 Plaintiff choose to pursue a motion for leave to amend and proposed amended complaint.

22 Finally, absent a motion requesting an extension of time, Plaintiff is still required to timely  
23 file a response to Belanger’s pending motion for summary judgment, which is currently due July 6,  
24 2018.

1 **III. CONCLUSION**

2 **IT IS HEREBY ORDERED THAT:**

3 (1) The First Amended Complaint (ECF No. 15) is hereby **STRICKEN**.

4 (2) Plaintiff has **THIRTY DAYS** from the date of this Order to file a motion for leave to  
5 amend and attached proposed first amended complaint. If Plaintiff chooses not to file an amended  
6 complaint, this action will proceed against defendant Belanger on Count III only.

7 (3) If Plaintiff chooses to file an amended complaint, the amended complaint supersedes  
8 the original complaint and, thus, the amended complaint must be complete in and of itself.  
9 Plaintiff's amended complaint must contain all claims, defendants, and factual allegations Plaintiff  
10 wishes to pursue in this lawsuit, and must contain factual allegations connecting each named  
11 defendant to the alleged constitutional violation. Moreover, Plaintiff must file the amended  
12 complaint on the court's approved prisoner civil rights form and it must be entitled "First Amended  
13 Complaint."

14 (4) The Clerk shall send Plaintiff the approved form for filing a section 1983 complaint,  
15 instructions for the same, and a copy of the original complaint (ECF No. 1-1).

16 (5) If an amended complaint is filed, the court will screen the amended complaint in a  
17 separate screening order, which may take several months.

18 (6) Absent a motion requesting an extension of time, Plaintiff is still required to timely file  
19 a response to Belanger's pending motion for summary judgment.

20 DATED: June 21, 2018.

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22 WILLIAM G. COBB  
23 UNITED STATES MAGISTRATE JUDGE  
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